

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 IO-13 CAB-05 CIAE-00 COME-00
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SS-15 NSC-05 PA-02 PRS-01 USIE-00 SSO-00 NSCE-00
INRE-00 OIC-02 AF-08 ARA-10 EA-09 NEA-10 /115 W
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O 161841Z MAR 77

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC IMMEDIATE 2803

INFO AMCONSUL MONTREAL

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MONTREAL FOR US REP ICAO

E.O. 11652:N/A

TAGS: EAIR, CA

SUBJECT: CIVAIR: MEETING OF SPECIAL LEGAL SUBCOMMITTEE
MARCH 23-APRIL 7, 1977, LEASE, CHARTER AND INTERCHANGE

REF: OTTAWA 1371

FOLLOWING IS TEXT, PROVIDED BY ROSE (MOT) OF PROPOSED
AMENDMENTS TO THE CHICAGO, TOKYO AND ROME CONVENTIONS
TO BE TABLED BY CANADA AT MARCH 23 MEETING:

QUOTE. INTRODUCTION:

1. THE WORK OF THE SUBCOMMITTEE MAY RESULT IN THE
PREPARATION OF AMENDMENTS TO THE CHICAGO, ROME AND
TOKYO CONVENTIONS. WITHOUT PREJUDICE TO THE POSITION
THAT THE SUBCOMMITTEE MAY TAKE AS TO THE CHOICE BETWEEN
AMENDING THE CHICAGO CONVENTION ITSELF OR HAVING A
SEPARATE MULTILATERAL CONVENTION, THE CANADIAN
REPRESENTATIVE ON THE SUBCOMMITTEE SUBMITS, AS A BASIS
FOR DISCUSSION, THE SUGGESTED AMENDMENTS GIVEN BELOW.
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AMENDMENTS TO THE CONVENTION ON INTERNATIONAL CIVIL
AVIATION (CHICAGO, 1944):

2. TWO SUGGESTED AMENDMENTS TO THE CHICAGO CONVENTION
ARE GIVEN BELOW. AMENDMENT I IS INTENDED TO TAKE
CARE OF PROBLEMS POINTED OUT BY THE PANEL OF EXPERTS IN

RELATION TO ARTICLES 12,31 AND 32, WHILE AMENDMENT II IS INTENDED TO TAKE CARE OF PROBLEMS WHICH THE PANEL'S REPORT INDICATED COULD ARISE IN RELATION TO ARTICLE 77. THE SUGGESTED AMENDMENTS FOLLOW:

'WHEN AN AIRCRAFT REGISTERED IN A CONTRACTING STATE IS LEASED WITHOUT CREW TO A LESSEE WHO HAS HIS PRINCIPAL PLACE OF BUSINESS OR, IF THE LESSEE HAS NO SUCH PLACE OF BUSINESS, HIS PERMANENT RESIDENCE, IN ANOTHER CONTRACTING STATE, THE LATTER STATE SHALL BE DEEMED

(A) IN THE CASE OF ARTICLE 12, TO HAVE ASSUMED THE UNDERTAKINGS OF A CONTRACTING STATE SPECIFIED IN THAT ARTICLE;

(B) IN THE CASE OF ARTICLES 31 AND 32(A), TO HAVE ACCEPTED THE RESPONSIBILITY OF THE STATE OF REGISTRY SPECIFIED IN THOSE PROVISIONS.'

'WHEN AN AIRCRAFT REGISTERED IN A CONTRACTING STATE IS LEASED WITHOUT CREW TO AN INTERNATIONAL OPERATING AGENCY, THE STATES BELONGING TO THE AGENCY SHALL DESIGNATE THE STATE AMONG THEM WHICH, FOR THE PURPOSES OF THIS CONVENTION, SHALL BE CONSIDERED AS THE STATE OF THE LESSEE AND THAT STATE SHALL, ON BEHALF OF ALL OF THE STATES BELONGING TO THE AGENCY, UNCLASSIFIED

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BE DEEMED

(A) IN THE CASE OF ARTICLE 12, TO HAVE ASSUMED THE UNDERTAKINGS OF A CONTRACTING STATE SPECIFIED IN THAT ARTICLE;

(B) IN THE CASE OF ARTICLES 31 AND 32(A), TO HAVE ACCEPTED THE RESPONSIBILITY OF THE STATE OF REGISTRY SPECIFIED IN THOSE PROVISIONS.'

AMENDMENT TO THE CONVENTION ON DAMAGE OF FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE (ROME, 1952):

.ADD TO ARTICLE 23, THE FOLLOWING NEW PARAGRAPH:

'3. WHEN AN AIRCRAFT IS LEASED WITHOUT CREW TO A LESSEE WHO HAS HIS PRINCIPAL PLACE OF BUSINESS OR, IF THE LESSEE HAS NO SUCH PLACE, HIS PERMANENT RESIDENCE, IN A STATE OTHER THAN THE STATE OF

REGISTRATION OF THE AIRCRAFT, THAT STATE SHALL FOR THE PURPOSE OF THIS CONVENTION BE CONSIDERED AS THE STATE OF REGISTRATION.'

AMENDMENTS TO THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT (TOKYO, 1963):

4. THE SUGGESTED TEXT GIVEN BELOW IS BASED ON LANGUAGE FOUND IN THE HAGUE (1970) AND MONTREAL (1971) CONVENTIONS. IT GOES BEYOND THE ASPECT OF JURISDICTION AND APPLIES TO THE TOKYO CONVENTION AS A WHOLE. EVEN IF THE TEXT

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WAS CONFINED TO THE ASPECT OF JURISDICTION ALONE, IT MIGHT BE OF SOME USE SINCE ARTICLE 3(1) WOULD THEN BE READ AS ESTABLISHING NOT ONLY THE JURISDICTION OF THE STATE OF REGISTRATION, BUT ALSO THE JURISDICTION OF THE STATE OF THE LESSEE. HOWEVER, IT MAY BE PREFERABLE ALSO TO ASSIMILATE THE STATE OF THE LESSEE TO THE STATE OF REGISTRATION FOR OTHER PURPOSES, E.G., THESE CONTEMPLATED IN ARTICLES 4, 5, 9 AND 16. THE SUGGESTED TEXT FOLLOWS:

'WHEN AN AIRCRAFT IS LEASED WITHOUT CREW TO A LESSEE WHO HAS HIS PRINCIPAL PLACE OF BUSINESS OR, IF THE LESSEE HAS NO SUCH PLACE, HIS PERMANENT RESIDENCE, IN A STATE OTHER THAN THE STATE OF REGISTRATION OF THE AIRCRAFT, THAT STATE SHALL, FOR THE PURPOSES OF THIS CONVENTION, BE CONSIDERED AS THE STATE OF REGISTRATION.'

5. THE TEXT GIVEN IN PARAGRAPH 4 ABOVE IS NOT INTENDED TO COVER THE CASE OF AIRCRAFT LEASED WITHOUT CREW TO A JOINT INTERNATIONAL OPERATING ORGANIZATION OR AN INTERNATIONAL OPERATING AGENCY. THEREFORE, IT MAY BE NECESSARY TO INCLUDE A NEW PROVISION TO TAKE CARE OF THIS CASE. A SUGGESTED TEXT FOLLOWS.
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'IF AN AIRCRAFT IS LEASED WITHOUT CREW TO A JOINT AIR TRANSPORT OPERATING ORGANIZATION OR AN INTERNATIONAL OPERATING AGENCY, THE STATES BELONGING TO SUCH ORGANIZATION OR AGENCY, AS THE CASE MAY BE, SHALL, ACCORDING TO THE CIRCUMSTANCES OF THE CASE, DESIGNATE THE STATE AMONG THEM WHICH, FOR THE PURPOSES OF THIS CONVENTION, SHALL BE CONSIDERED AS THE STATE OF THE LESSEE AND SHALL GIVE NOTICE THEREOF TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION WHICH SHALL COMMUNICATE THE NOTICE TO ALL STATES PARTIES TO THIS CONVENTION.'

CASES OF AIRCRAFT LEASED TO A JOINT AIR TRANSPORT OPERATING ORGANIZATION OR AN INTERNATIONAL OPERATING AGENCY ARE LIKELY TO BE MORE FREQUENT THAN THE CASES CONTEMPLATED BY ARTICLE 18. THERE HAVE BEEN NONE TO DATE. THEREFORE, IT IS FOR CONSIDERATION WHETHER IT WOULD BE PRACTICABLE TO REQUIRE, AS IN THE CASE OF ARTICLE 18, THE NOTICE TO ICAO AND SUBSEQUENT COMMUNICATION OF THAT NOTICE BY ICAO TO CONTRACTING STATES. OBVIOUSLY THERE IS SOME NEED FOR PUBLICATION OF THE DESIGNATION MADE. COULD THIS BE SATISFACTORILY ACHIEVED BY THE FILING OF THE NOTICE WITH ICAO, WITHOUT REQUIRING THE SECOND STEP OF COMMUNICATION BY ICAO TO CONTRACTING STATES? UNQUOTE. ENDERS

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Disposition Approved on Date:
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Disposition Event:
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